

8/26/08

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August 26, 2008

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By Hand Delivery

City Council Members
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

***Re: 981 Fremont Street – Approval and Authorization for City Manager
to Execute Services Agreement for Inspection Services of Morse
Mansion***

Dear Council Members:

Hopkins & Carley has been retained by Morse-Fremont-08, LLC (the "LLC") in connection with the issues being raised by the City of Santa Clara (the "City") related to the Morse Mansion, located at 981 Fremont Street (the "Mansion").

As we understand it, prior to purchasing the Mansion, the LLC had numerous meetings and discussions with Kevin Riley, the Director of Planning, and various other members of the City staff regarding the LLC's purchase and intended use of the Mansion. On every occasion, the City told the LLC to move forward with the project and that the City did not have any concerns regarding the proposed residential use. In reliance on those representations, the LLC spent considerable resources purchasing the mansion, locating a tenant, and performing the necessary maintenance to get the Mansion ready for residential tenants. The LLC was in constant communication with the City every step of the way. The LLC is therefore shocked that *after* it closed escrow on the purchase of the Mansion and *after* the new tenants moved in, the City chose to completely change its position.

Although there are a number of issues the City has raised in connection with the Mansion, as we understand it, the *only* issue on the agenda for the meeting tonight is a request to authorize the City Manager to retain consultants to inspect interior and exterior changes to the Mansion made by the LLC, as well as the prior owners of the Mansion. However, we note that the staff report also contains some statements regarding whether the current residential use of the Mansion complies with the OA-HT zoning designation. We do want to state for the record that our client has not, at this time, agreed to apply for a rezoning. Since that issue is not officially on the agenda,

and since we were just retained, we will need to research the issue in order to address the issue of the zoning district at an appropriate time, and expect that no action will be taken on that issue at tonight's hearing.

As to the issue of changes that have been made to the interior or exterior of the property, as the City is aware, the LLC obtained required building permits and passed all inspections for the alternation it made to prepare the Mansion for use, including: (1) installation of residential fire sprinklers, (2) installation of an energy efficient water heater; (3) installation of a new gas line; (4) replacement of the water meter; and (5) service and repair of the underground water main. The LLC performed no other work for which a permit was required. Nonetheless, although under no obligation to do so, the LLC recently sent Kevin Riley a list of all routine maintenance the LLC has performed on the property, for which no permit is required. The City has inspected the property no less than 8 times, and the LLC even invited Kevin Riley and members of his Staff to personally tour the Mansion. Therefore, the proposal that the City Council authorize the expenditure of up to \$17,000 for the purpose of hiring a consultant to determine whether the LLC made any changes to the property without the benefit of approvals or permits is completely arbitrary, unnecessary, and would be an extraordinary waste of City resources.

We are not aware that, at time during which the property was under the prior ownership, any question about unauthorized improvements was ever raised. We have not been advised of any specific alterations claimed to have been made by our client's predecessor-in-interest. Further, the LLC was never told that it needed to obtain approvals for any work performed prior to the time it purchased the property. The fact that this request is coupled with a sudden dramatic change in the zoning code interpretation does not seem to be coincidental.

The LLC purchased the property with the intent of maintaining the historic value of the Mansion and is working with a contractor who is experienced in historic preservation and rehabilitation. The suggestion that the LLC is doing anything other than furthering the goals of historic preservation is therefore entirely unfounded.

The LLC therefore requests that the City Council deny the request to authorize the City Manger to execute a Services Agreement for inspection services of the Morse Mansion; (2) deny the request for \$17,000 in additional appropriations in the Planning Division Contractual Services account; and (3) deny the request to transfer \$17,000 from the General Contingency Fund Building Inspection Reserve.

City Council Members
August 26, 2008
Page 3

If you have any questions, please feel free to contact the undersigned. Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY
A Law Corporation



Joan R. Gallo

JRG/ash

cc: Helene Leichter, City Attorney
Kevin L. Riley, Director of Planning and Inspection
Jennifer Sparacino, City Manager